



SOUTH DAKOTA DEPARTMENT OF AGRICULTURE

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June 5, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania, NW
Mail Code 1101A
Washington, D.C. 20460
Sent via electronic mail

RE: Ninth Circuit decision to vacate dicamba registrations

Dear Administrator Wheeler:

The June 3, 2020 decision by the United States Court of Appeals for the Ninth Circuit to immediately vacate the registration of three dicamba products (Xtendimax, Engenia and FeXapan) during the height of the application season will cause severe economic damage to our producers, dealers, and applicators. The South Dakota Department of Agriculture (SDDA) is designated as the lead agency for the regulation of pesticide use and application, as well as licensing and training applicators, overseeing worker protection, and registering pesticides for sale in South Dakota. On behalf of the SDDA, I strongly urge the U.S. Environmental Protection Agency (EPA) to provide clarity to state regulatory agencies regarding state registrations and enforcement of these products.

The immediate nature of the decision and mandate has created confusion in our industry and with state regulators. Growers invested in seed that is dicamba tolerant as part of this system and invested in products intending to use over-the-top (OTT) application of dicamba to control post-emergent weeds. As a result of the court's decision there will be economic losses for unusable products and there will likely not be sufficient supplies of alternate products available. Growers are now without options at the worst possible time in their production year.

EPA guidance on the impact of the court's decisions and anticipated further legal action is necessary to provide clarity to producers and regulators. In addition to the limited application window provided by the product labels, South Dakota's 24c Special Local Needs labels (SLN) prohibit application after June 30th making immediate guidance from EPA critical.

Thank you for your review and consideration of this urgent request.

Sincerely,

Larry Rhoden
Lieutenant Governor and Interim Secretary of Agriculture